

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022* (the Regulations) is to specify the organisation known as al-Qa’ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

Paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of **terrorist organisation**.

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP Minister** must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. Subsection 100.1(1) provides that, for Part 5.3 of the *Criminal Code*, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation al-Qa’ida in the Indian Subcontinent is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at [Attachment C](#)).

¹ A **terrorist organisation** is defined in subsection 102.1(1) of the *Criminal Code* as:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- (b) an organisation that is specified by the regulations for the purposes of this paragraph.

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations enable the offence provisions in Division 102 of Part 5.3 of the *Criminal Code* to continue to apply in relation to conduct relating to al-Qa'ida in the Indian Subcontinent.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Indian Subcontinent) Regulations 2019*, which would otherwise cease to have effect on 29 November 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation al-Qa'ida in the Indian Subcontinent continues to be specified for the purposes of paragraph (b) of the definition of ***terrorist organisation***.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 29 November 2022. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of this Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations within the timeframe nominated by the AFP Minister.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*, the AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that al-Qa'ida in the Indian Subcontinent meets the legislative requirements for listing.

Advice was obtained from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022* (the Regulations) specify al-Qa’ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify al-Qa’ida in the Indian Subcontinent as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to al-Qa’ida in the Indian Subcontinent.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with al-Qa’ida in the Indian Subcontinent as a listed terrorist organisation.

Terrorist organisations, including al-Qa’ida in the Indian Subcontinent, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a terrorist organisation requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)

- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders.

The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including al-Qa'ida in the Indian Subcontinent. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests, and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance al-Qa'ida in the Indian Subcontinent.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid, or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with al-Qa'ida in the Indian Subcontinent, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the AFP Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the AFP Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the AFP Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the AFP Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP
Attorney-General

Details of the Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 29 November 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2019*.

Section 5 – Terrorist organisation – Al-Qa’ida in the Indian Subcontinent

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Qa’ida in the Indian Subcontinent is specified.

10. The effect of specifying al-Qa'ida in the Indian Subcontinent as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with al-Qa'ida in the Indian Subcontinent.
11. Subsection 5(2) provides that al-Qa'ida in the Indian Subcontinent is also known by the name AQIS.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Indian Subcontinent) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation al-Qa'ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 29 November 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

Statement of Reasons

Listing al-Qa'ida in the Indian Subcontinent as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Indian Subcontinent (AQIS). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

al-Qa'ida in the Indian Subcontinent

Known aliases

AQIS

Legislative basis for listing a terrorist organisation

Division 102 Criminal Code Act 1995 (Cth) (*the Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the *Criminal Code*, subsection 102.1(20) of the *Criminal Code* describes that the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed AQIS as a terrorist organisation under the *Criminal Code* with effect from 29 November 2016. AQIS was re-listed, effective 29 November 2019.

Details of the organisation

AQIS is an al-Qa'ida-affiliated religiously motivated violent extremist organisation. It was established with the assistance of al-Qa'ida and shares the same anti-Western ideology. The then al-Qa'ida leader, Ayman al-Zawahiri, officially announced the existence of AQIS on 3 September 2014, and identified Pakistan-based Asim Umar as its leader.

Established with the purpose of advancing al-Qa'ida's ideology and objectives in South Asia, the objectives of AQIS are the same as those previously articulated by al-Qa'ida – to prepare Muslims for military jihad against their enemies, to liberate Muslim lands now ruled by non-Muslims, and to revive the Islamic caliphate. In his 2014 announcement of the establishment of AQIS, al-Zawahiri identified Burma (Myanmar), Bangladesh, and India's regions of Assam, Gujarat and Kashmir as regions where it would operate with the intention to fight the governments of Pakistan, Afghanistan, India and Bangladesh.

On 6 March 2016, the AQIS media branch, al-Sahad in the Indian Subcontinent, provided a link to the video 'Al-Hadeed News Report'. The video outlined the objectives of AQIS as being to conduct attacks on:

- the United States of America (US)
- the Pakistani Military Intelligence and Security agencies
- the Government of Pakistan
- enemies of Islam
- blasphemers, atheists and disbelievers.

The objectives were approved by the AQIS Central Shura following instructions from the then leader, al-Zawahiri.

Leadership

AQIS is currently led by Osama Mahmoud (variant Usamah Mahmood), who was formerly the AQIS spokesperson, and is reported to be a Pakistani national. Mahmoud's appointment in 2019 replaced the founding leader, Asim Umar, who was killed in a joint US/Afghan military operation in Afghanistan in 2019.

AQIS leadership resides in the eastern and southern regions of Afghanistan, and North and South Waziristan, Pakistan.

Membership

AQIS membership was initially drawn from extremist groups in Pakistan, with most members being Pakistani nationals. In 2020, media reported AQIS had between 150 and 200 members in the South Asian region. Information made public following disruptions by Pakistani authorities in 2021 indicated AQIS had small media, financing and operational cells located in parts of Pakistan, including in Punjab and Sindh Provinces.

Recruitment and funding

AQIS recruits from among Muslim communities in South Asia through a combination of real-world and virtual methods. Publications such as the AQIS Nawa-i-Afghan magazine are key tools for promoting membership. For example, AQIS published an article in this magazine in December 2019 providing guidance for recruiting members to undertake jihad.

AQIS established a presence in India in 2015 with the intention of radicalising and recruiting Indian nationals. The leader of AQIS in India, Mohammad Asif, was arrested by Indian authorities in late 2015. Asif said that the recruits from India were transported to Afghanistan for training in weapons, tactics and religious studies. In June 2016, charges were filed against 17 alleged AQIS members in Delhi, India, for conspiracy, recruitment for a terrorist act, and membership of a terrorist organisation.

Links to other groups

AQIS has close links with al-Qa'ida core (al-Qa'ida is listed as a terrorist organisation under the *Criminal Code*), the Afghan Taliban, and Tehrik-e-Taliban Pakistan. In October 2015, the former AQIS leader, Asim Umar, pledged allegiance to the then chief of the Afghan Taliban, Mullah Mansour, and AQIS members have been killed in Taliban-controlled territory (before the Taliban took control of Afghanistan) alongside Taliban members.

AQIS is also associated with Bangladesh-based extremist group Ansar al-Islam Bangladesh (AIB). AIB conducted eight killings of secularists and bloggers in Bangladesh between 2014 and 2016, and AQIS has claimed responsibility for each of these attacks.

Terrorist activity

Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act

AQIS members have historically conducted attacks against Pakistani military and security personnel. The attacks have ranged from targeted assassinations of senior military and intelligence officials to larger scale attacks using improvised explosive devices resulting in multiple deaths.

AQIS plots in Pakistan were regularly disrupted by Pakistani authorities throughout 2020 and 2021, and AQIS was also involved in fighting the former Afghan Government alongside the Afghan Taliban.

Recent reported plots or disruptions include:

- 9 November 2021: An AQIS member located near Chakwal City, Punjab Province, Pakistan was arrested in possession of large numbers of weapons including rocket-propelled grenades, rocket launchers, firearms, ammunition and ball bearings.
- 19 April 2020: Pakistani authorities arrested four AQIS members in Karachi, Sindh Province, Pakistan. Authorities seized weapons and explosives, which they claimed were intended for use by AQIS members in an act of terrorism targeting the Pakistani stock exchange, City Courts, Police Training Centre, or law enforcement agency offices.

Advocating the doing of terrorist acts

AQIS has publicly advocated the doing of terrorist attacks in order to further its objectives, including through online propaganda designed to radicalise and inspire susceptible individuals to undertake attacks. Public statements where AQIS has advocated terrorist attacks include:

- 7 June 2022: AQIS published an English and Urdu statement calling for attacks against the ‘Saffron terrorists’ (the Indian governing party), stating that ‘we shall bind explosives with our bodies and the bodies of our children to blow away the ranks of those who dare to dishonour our Prophet.’
- 18 November 2021: AQIS released a video through its As-Sahab Subcontinent media outlet calling for Muslims in India to ‘join the jihad in Kashmir’ and ‘actively participate in battles there.’

Other considerations

Links to Australia and threats to Australian interests

There are no known links between AQIS and Australia.

Australian interests have not been successfully attacked by AQIS, however, the anti-Western ideology of the group and AQIS's willingness to undertake large scale, indiscriminate attacks may result in attacks against Australian interests.

AQIS specifically mentioned an Australian Navy vessel during the planning of the AQIS operation to take control of a Pakistani Navy Ship in 2014. AQIS noted that the Australian Navy was participating in the patrols of sea routes. Targeting of the Australian Navy vessel was abandoned in favour of easier targets.

Listings by likeminded countries or the United Nations

AQIS is listed as a proscribed terrorist organisation by the Governments of the US and Canada, and is included in the UK Government's listing of al-Qa'ida.

Engagement in peace or mediation processes

AQIS is not known to have engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that AQIS continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts and advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, AQIS is known to have committed or threatened actions that:

- cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public.
- are intended to have those effects.
- are done with the intention of advancing AQIS's political, religious or ideological causes.
- are done with the intention of coercing or intimidating, the government of one or more foreign countries.
- are done with the intention of intimidating the public or sections of the public.